



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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DA 02-3072
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DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF LIGHTYEAR COMMUNICATIONS BY A.R.C. NETWORKS, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 02-346

On October 2, 2002, A.R.C. Networks, Inc. d/b/a InfoHighway and InfoHighway of Virginia (collectively, "A.R.C.") and Lightyear Communications, Inc., Lightyear Telecommunications, LLC and Lightyear Communications of Virginia, (collectively, "Lightyear" or "the Lightyear Companies"), filed an application pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, for Commission consent to the acquisition of assets of Lightyear by A.R.C., specifically certain portions of Lightyear's customer base and accounts receivable.¹

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because: (i) the transaction will result in the transferees, A.R.C. Networks, Inc. and InfoHighway of Virginia, Inc., having a market share in the interstate, interexchange market of less than 10 percent; (ii) the transferees will provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to this transaction; and (iii) none of the applicants is dominant with respect to any service.²

The Lightyear Companies provide local and interexchange services throughout the United States. The transaction described herein affects certain Lightyear customers located in the jurisdictions of Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey,

¹ The applicants have also filed an application for international section 214 authority, which will be processed separately. Any action on this domestic 214 application is without prejudice to Commission action on other related pending applications in connection with the proposed transaction.

² See 47 C.F.R. § 63.03(b)(2)(i).

New York, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, D.C. In addition, a total of 24 customer locations in the states of California, Florida, Georgia, Illinois, Michigan, North Carolina, Ohio, Tennessee, Texas, and Wisconsin, but primarily located in the above-referenced states, may be transferred.

A.R.C. is a non-dominant carrier that provides telecommunications services to small-and medium-sized business, residential customers, and government entities in more than 30 states. A.R.C. is currently certificated to provide facilities-based and/or resold local exchange service in California, Connecticut, Delaware (conditional), the District of Columbia, Florida, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, and Vermont. A.R.C. is also authorized, pursuant to certification, registration, or deregulation, to provide intrastate interexchange services in Arizona (interim authority), Arkansas, California, Connecticut, Delaware (conditional), Florida, Georgia, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, and Vermont. A.R.C. intends to seek authority to provide intrastate interexchange services in Tennessee and Wisconsin.

On June 14, 2002, the parties entered into Asset Purchase and Management Agreements (the “Agreements”). These Agreements provide for a multi-step transaction in which the Lightyear Companies will transfer to A.R.C. their customer base and accounts receivable.

Prior to the parties’ execution of the Agreements, the Lightyear Companies and their parent, Lightyear Holdings, Inc., had sought bankruptcy protection in the United States Bankruptcy Court for the Western District of Kentucky, Louisville Division (the “Bankruptcy Court”), and had been granted debtor-in-possession status under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* Lightyear’s debtor-in-possession status necessitated approvals of the Agreements by the Bankruptcy Court. On August 23, 2002, the Bankruptcy Court issued its Order approving the Asset Purchase Agreement and sale, finding that approval and consummation of the sale of Lightyear’s Assets to A.R.C. was in the best interest of the Lightyear Companies and their parent, their creditors, and estates.³

The Applicants state that this application will serve the public interest, convenience, and necessity because it will promote competition in the provision of telecommunications services. According to the applicants, acquiring the Lightyear Assets will enable A.R.C. to expand its customer base, allowing it to increase revenues and thereby to compete more effectively in the telecommunications market. Applicants also assert that the transaction is in the best interest of the affected Lightyear customers, who will be fully informed of the impending transfer and will have an adequate opportunity to select an alternate provider if they so choose. Those that elect to remain with InfoHighway will be transferred, subsequent to grant of the Application.

³ See Order Pursuant to 11 U.S.C. §§ 105, 363, and 1146 (c) and Bankruptcy Rules 2002 and 6004, Case Nos. 02-32257, 02-32723, 02-32725, 02-32726 (August 23, 2002).

GENERAL INFORMATION

The transfer of control application identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days** and **reply comments within 21 days** of this notice.⁴ Unless otherwise notified by the Commission, an applicant is permitted to transfer control of the domestic lines or authorization to operate on the 31st day after the date of this notice. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

⁴ See 47 C.F.R. § 63.03(a).

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893.
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov, and
- (3) William Dever, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room , 5-C266, Washington, D.C. 20554; e-mail: wdever@fcc.gov; and
- (4) Imani Ellis-Cheek, Telecommunications Division, International Bureau, 445 12th Street, S.W., Room 6-A739, Washington, D.C. 20554; email: ielis@fcc.gov; and
- (5) Nandan Joshi, Office of General Counsel, 445 12th Street, S.W., Room 8-A820, Washington, D.C. 20554; e-mail: njoshi@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson, at (202) 418-1394 or William Dever, Competition Policy, Wireline Competition Bureau at (202) 418-1578.

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